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EXAMINER

MEREK, JOSEPH C

ART UNIT PAPER NUMBER

3727

DATE MAILED: 06/25/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/867,581

Applicant(s)

PRZYTULLA ET AL.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4,6-13,15-18,29,34-36,38-41 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,6-13,15-18,29,34-36,38-41 and 43-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 2/3/03 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### ***Specification***

The amendment filed 3/18/03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the addition of the term "substantially" is not supported by the disclosure. The original specification used the wording generally or nearly.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 4, 6-13, 15-18, 29, and 34-36, 38-41, 43, and 44 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 1 and 34, it has not been adequately disclosed how the indentation is substantially v-shaped in a plane extending substantially parallel to the longitudinal axis. Regarding claims 4, 10, it has not been adequately disclosed how the sidewall section define a substantially rectangular cross-section of the sidewall. The original disclosure used the term generally square cross-section. Regarding claims 4,

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10, 15, 38, and 44 is has not been adequately disclosed how the first indentation defines a substantially circular cross-section of the sidewall. The original disclosure used the term generally. Regarding claim 13, 38, and 44, it has not been adequately disclosed how the first cross-section is substantially square. The original disclosure specified that the cross-section was generally square. Regarding claim 39, it has not been adequately disclosed how the indentation is substantially intermediate the end walls. The original disclosure gives the indentation is at 43% of the bottom, which is not substantially intermediate the end walls. Regarding claims 1, 15, 36, and 43, it has not been adequately disclosed how the indentation is substantially V-shaped. The remaining claims are included since they stem from rejected claims. Regarding claim 16, it ha not been adequately disclosed how the indentations do not transition into each other. The drawings show the indentations extending into each other. This is a new matter rejection. The remaining claims are included since they stem from rejected claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 10-13, 15, 16, 36, 38, 43, and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 4, 10, 38, and 44, as seen in the drawings the cross-section at the indentation has flat areas where it meets the sidewalls. It is not clear how this is substantially a circular cross-section. It is not clear what is being claimed. Regarding claims 1, 15, 36, and 43,

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it is not clear what is required by the imitation substantially "substantially V-shaped". It is not clear what is being claimed. Regarding claim 13, it is not clear how the first cross-section is substantially square since the corners are rounded. It is not clear what is being claimed. Regarding claim 16, it has not been adequately disclosed how the indentations do not transition into each other. The drawings show the indentations extending into each other. It is not clear what is being claimed. The remaining claims are included since they stem from rejected claims.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-13, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Roper '899. Regarding claim 10, as it is best understood, there are angular indentations between the intersections of the sidewall sections. The indentations define a second cross-section that is different from a first portion of the sidewall that defines a first cross-section. The first cross-section is generally square and the second cross-section is generally round or nearly circular since the corners are rounded. The end wall has the recessed well with the drain/fill openings 54 or 56. These are recessed with respect to surface 51. Regarding claim 11, the second portion (the indentation) divides the first portion into upper and lower sections. Regarding claim 12 and 17, the indentation is located within the claimed percentages. Regarding claim 13, as it is best understood, the cross section is generally square. Regarding claim 18,

the protrusions are seen as 58 for stiffening the end wall. They extend vertically above the lower surrounding area.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-13, 16, 17, 18, 34, 35, 38 and 39-41, 43, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Virgo, Jr. et al. Regarding claims 10 and 39, DE '722 does not teach the claimed protrusion on the sidewall. Virgo, Jr. et al as seen in Figs. 1 and 2, teaches a similar container with a indentation in the side wall. It would have been obvious to employ the indentation of Virgo, Jr. et al in the container of DE '722 to reinforce the sidewall. The cross-section in the indentation is different from the cross-section above or below the indentation. The vertical thickness of Virgo, et al varies as it extends around the container. Regarding claim 11, the indentation divides the container into upper and lower sections. Regarding claims 12 and 17, the indentation is located at about 30% of the height of the container. The about allows for variation outside of the 30-70% range. Regarding claim 13, the cross-section is substantially square which allows for variation from a true square. Regarding claim 16, as it is best understood, the indentation do not transition

into each other as seen in Fig. 4 of Virog, Jr. et al. Regarding claim 34, as it is best understood, the indentation is v-shaped. The substantially allows for variation from exactly v-shaped. Regarding claim 35, see Fig. 4, where the indentation 16 is shown and is shallowest at a point intermediate the corner sections as seen at 11 and 12. Regarding claim 38, as it is best understood, the cross-section of the indentation is generally circular since it has rounded corners. The cross-section of the container outside of the indentation is substantially square which allows for variation from a perfect square. Regarding claims 40 and 41, the thickness is greatest in the corners since the indentation tapers in the sidewall as seen in Fig. 1. Regarding claim 42, as it is best understood that the thickness is the smallest intermediate the corner sections. Regarding claim 18, see Fig. 1b of De '722 where 44 is the protrusion in the end wall. Regarding claim 43, the open claim language allows for more than one deepest location. The corners have locations that are deeper than the location on the sidewalls. Regarding claim 44, as it is best understood, the first cross-section is generally square and the second cross-section is generally round or nearly circular. Regarding claims 34, and 45, see Fig. 4, where it is shown by Virgo, Jr. et al that the indentation of the modified container of DE '722 is deeper in the corner at 20 then the adjacent area on the side of the container and the indentation tapers into the sidewall.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Virgo, Jr. et al. as applied to claim 1 above and further in view of Snyder et al. Regarding claim 7, the modified container of DE '722 does not teach the longitudinal indentation. Snyder et al as seen in Fig. 1, teaches a sidewall corrugated in both the

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circumferential and longitudinal directions. It would have been obvious to employ the longitudinal indentations of Snyder et al in the modified container of DE '722 to prevent the sidewall bulging when stacked or to allow for a thinner side wall as taught by Snyder et al in Col. 5, lines 32-43.

Claims 1, 4, 6, 8-13, 15, 16, 17, 18, 19, 29, and 34-36, 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Sugiura et al. Regarding claims 1, 10, 34 and 45, as they are best understood, DE '722 does not teach the indentations being deeper in the corners. Sugiura et al as see in Figs. 1 and 2, teaches an indentation in the sidewall that is deeper in the corners. It would have been obvious to employ the indentation of Sugiura et al in the container of DE '722 to reinforce the sidewall. The indentation in the modified container of DE '722 is V-shaped. Regarding claims 4 and 38, as it is best understood, the first cross-section is generally square and the second cross-section is generally round or nearly circular. Regarding claims 6, 12, and 17, the indentation is found in the specified height range. Regarding claim 8, see Figs. 1a of DE 722 where 60 is the ring. Regarding claims 9 and 18, see Fig. 1b of DE '722, where 44 is the rib in the end wall. Regarding claim 11, the second portion divides the first portion into upper and lower sections. Regarding claims 13 and 20, as it is best understood, the first cross-section is generally square. Regarding claim 15, as it is best understood, the indentation is V-shaped and the second cross-section is generally round or nearly circular. Regarding claim 16, as it is best understood, the limitation is not supported and not required. Regarding claim 19, the substantially intermediate is not supported and the height meets the 30-70% range disclosed. Regarding claim 29,



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the indentations are deepest in the corners and become shallower as they transition into the sidewalls. Regarding claim 35, the bottom of the indentation is shallowest intermediate the corners. Regarding claim 36, as it is best understood, the indentation is V-shaped and deepest in the corners. Regarding claim 38, as it is best understood, the first cross-section is substantially square which allows for variation from a perfect square and the indentation is generally circular since it has rounded corners as seen in Fig. 2 of Sugiura et al

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Sugiura et al as applied to claim 1 above, and further in view of Snyder et al. Regarding claim 7, the modified container of DE '722 does not teach the longitudinal indentation. Snyder et al as seen in Fig. 1, teaches a sidewall corrugated in both the circumferential and longitudinal directions. It would have been obvious to employ the longitudinal indentations of Snyder et al in the modified container of DE '722 to prevent the sidewall bulging when stacked or to allow for a thinner side wall as taught by Snyder et al in Col. 5, lines 32-43.

### ***Response to Arguments***

Applicant's arguments filed 3/18/03 have been fully considered but they are not persuasive. Applicant continues to change the claim language and the language of the specification to overcome the prior art. The previous rejections remain applicable since the amended claims include new matter. For example, the original language specifies

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cross-sections that are either generally square or nearly circular. The applied rejections meets the limitations as originally disclosed. See the 112 rejections above for all the indications of new matter. Additionally, the indentation of the instant invention does not extend around the container in the same shape. The original claims specified that the angular indentations are substantially v-shaped. The substantially v-shaped limitation allows for the variations, which includes the shapes as seen in the applied references. The v-shape of the instant invention is not a perfect v and the substantially allows for variation from a true v-shape. The v-shape of the instant invention varies in height in the corners.

### ***Conclusion***

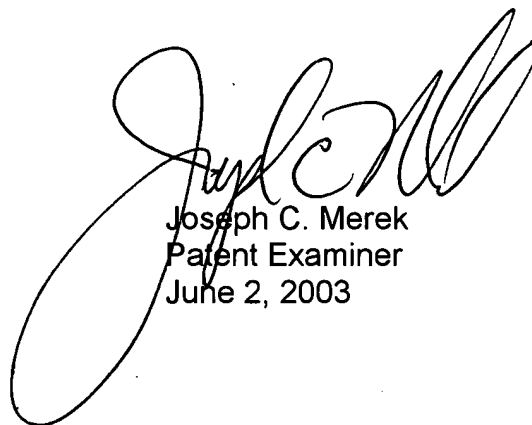
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson et al is cited for teaching a corrugated sidewall with varying vertical thickness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

A handwritten signature in black ink, appearing to read 'J. C. Merek', is written over the typed name and date.

Joseph C. Merek  
Patent Examiner  
June 2, 2003